

S/N 10/628,319
Attorney Ref. No.: 33-944

REMARKS

Remarks About the Objections to the Specification:

The Examiner objected to the specification based on an informality purportedly located at page 3, line 16. Applicants were unable to match the noted error with a corresponding error in the specification at the specified location, or at any other location. Applicants respectfully request that the Examiner again identify the location of the error, and/or present an Examiner's amendment making the noted change.

Remarks About the Information Disclosure Statement:

The Examiner has not considered the information provided with an Information Disclosure Statement and Form PTO-1449 filed April 8, 2004, purportedly since a Form PTO-1449 was not provided. Applicants respectfully disagree.

In particular, Applicants have attached at Tab 1 a copy of a Form PTO-1449 filed by Applicants and printed out from the USPTO Image File Wrapper (IFW). The Form PTO-1449 has a USPTO date stamp of April 8, 2004. Applicants also have enclosed at Tab 2 a copy of a return post card stamped April 8, 2004, which evidences that the IDS, Form PTO-1449 and eleven non-US patent references were timely received by the USPTO on April 8, 2004.

Accordingly, Applicants timely submitted the noted IDS, Form PTO-1449 and required references. Applicants respectfully request that the Examiner consider the recited references and initial the Form PTO-1449 to show such consideration. In addition, Applicants submit that, since the aforementioned documents were timely

bay such that the lower edge is maintained at a height no greater than h. In this way, the specification provides a teaching of the manner and process of making and using the invention, fully commensurate with the scope of the claims, without undue experimentation (MPEP 2164 and 2164.04). Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 USC 112(1).

Remarks About Rejection Under 35 USC 112(2):

The Examiner has rejected claim 31 as being indefinite. Applicants respectfully disagree. Indeed, the language at line 4, as recited by the Examiner, provides the clarity and definiteness the Examiner seeks. In particular, claim 31 recites that the rotation angle is “sufficiently greater than 90° *such that when said second bay is in the retracted position, the lower edge is positioned on the same side of the plane.*” Thus, one of skill in the art would understand that the angle is selected such that the lower edge is positioned as recited in the claim. Depending on the particular construction of the attenuator, that angle may be at 91° or 165°, as long as the angle results in the claimed configuration.¹ As such the claims are clear and definite. On this point, it should be noted that the breadth of the claim is not to be confused with indefiniteness (MPEP 2173.04).

Remarks About the Rejections Under 35 USC 102:

The Examiner has rejected claims 20, 22-25, 28-30, 32-36, 39 and 42-44 as being anticipated by U.S. Patent No. 6,581,992 to Gertz. Applicants gratefully acknowledge the Examiner’s statement that claims 21, 26, 27, 31, 37, 38, 40, 41 and

¹ As recognized by various Courts, limitations such as an “effective amount” are not indefinite where the amount can be ascertained from the written description, and an indefiniteness rejection is especially inapplicable when the claim further recites a function to be achieved, as recited in claim 31 (MPEP 2173.05(c)).

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and properly filed, that the Examiner consider such documents without payment of any fee or certification under 37 CFR 1.97(e) as requested in the Office Action.

Remarks About Claim Objections:

Applicants have amended claims 32-35, 39, 42 and 43 as suggested by the Examiner. Accordingly, the Examiner's objections with respect to the noted claims have been overcome and notice to that effect is earnestly solicited.

Remarks About Rejections Under 35 USC 112(1):

The Examiner has rejected claim 28 under 35 USC 112(1) as not being enabled. In particular, as Applicants understand it, the Examiner asserts that it is not clear as to where the attenuator is being rotated 90 degrees, and further that it is unclear as to what angle or rotation is being claimed that is different than the 90 degree angle. The Examiner seems to be arguing that the claims are indefinite, rather than not enabled by the specification. In any event, Applicants have amended claim 28 to clarify the respective rotation angles.

Applicants note that claim 28 recites that the "second bay is rotated *relative to* said first bay by a second rotation angle of 90°." Accordingly, as fully supported by the specification, it is clear that the second bay is being moved relative to the first bay, and that the lower edge is positioned at a height h when the second bay is so positioned. Second, claim 28, as now amended, clearly recites that the first rotation angle, which is greater than 90 degrees as recited in parent claim 20, is selected such that the lower edge is positioned at a height no greater than h. Applicants submit that these amendments clarify the issues raised by the Examiner.

Applicants submit that claim 28 is clearly enabled by the specification. As disclosed in the specification, including FIGS. 5-10, the actuator 50 and links 56, 58 (specification at 4, lines 16-25) cooperate to rotate the first bay relative to the second

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45 would be allowed if rewritten in independent form. In response, Applicants have rewritten those claims in independent form.

Independent claim 20 recites that the “second bay is pivotable *relative to said first bay* between a deployed position, wherein said second bay has a substantially horizontal orientation, and a retracted position, wherein said second bay is rotated relative to said first bay through a rotation angle of greater than 90° relative to said deployed position *as said first bay is maintained in said substantially horizontal orientation.*” Independent claim 39 recites that “said second bay is rotated *relative to said first bay* through a rotation angle of greater than 90° relative to said substantially horizontal orientation of said second bay *as said first bay is maintained in said substantially horizontal orientation* when said vehicle mounted crash attenuator is in said retracted configuration.”

In contrast, the second bay of Gertz is not rotated *relative to the first bay* through an angle greater than 90° relative to the deployed position *as the first bay is maintained in a substantially horizontal position.* Rather, the second bay is rotated at most 90 degrees (not greater than 90 degrees) relative to the first bay, with the first bay then being rotated 90 degrees rather than being maintained in a substantially horizontal position. Accordingly, Gertz fails to disclose or suggest all of the imitations of claims 20 and 39, and the claims depending therefrom, and this application should be passed to allowance on the next Office Action.

CONCLUSION:

After Amendment, this application has 26 claims, including eight independent claims. Applicants previously paid for 26 claims, including three independent claims. Applicants have enclosed a check herewith in the amount of \$430 for the additional five (5) independent claims. The Commissioner is hereby authorized to charge payment of any additional fees associated with this amendment, or credit any

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overpayment, to Deposit Account No. 23-1925. If for any reason this application is not considered to be in condition for allowance and an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

Respectfully Submitted,

Dated: September 1, 2004

By:

A handwritten signature in black ink, appearing to read 'Andrew D. Stover', is written over a horizontal line.

Andrew D. Stover

Reg. No. 38,629

Attorney for Applicants

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